

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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SEP 25 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
	)	
AT&T Corp.	)	Contract Tariff Transmittal
	)	No. 3076
	)	
Revisions to Contract	)	CC Docket No. 95-146
Tariff F.C.C. No. 360	)	

DOCKET FILE COPY ORIGINAL

MOTION FOR ACCEPTANCE OF LATE-FILED PLEADING,  
DIRECT CASE OF AT&T CORP. FILED ONE DAY LATE

AT&T Corp. respectfully requests that the Commission exercise its discretion under Sections 4(i) and 4(j) of the Communications Act, 47 USC §§154(i) and 154(j), to accept AT&T's Direct Case filed one day late. As shown in the accompanying Certification of Shari Loe, Esq. and its attachments, the failure to file timely was due to unforeseeable difficulties with AT&T's computer systems; as AT&T has filed its pleading at 9:30 this morning, one business day after the filing deadline, AT&T actually has missed timely filing by only about an hour; MCI was timely served, albeit with a document that retained minor formatting problems that would not interfere with its ability to respond to the pleading; and the failure to timely file was inadvertent and will not prejudice the Commission's or the public's ability to review and respond to AT&T's Direct Case. As the filing deadline here is not statutory, the Commission has full authority to accept this late-filed pleading for good cause shown, and has done so in

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similar circumstances in a §204(a) investigation proceeding. See In re Local Exchange Carrier's Rates, Terms and Conditions for Expanded Interconnection for Special Access, CC Docket No. 93-162, Phase I, First Report and Order, 8 FCC Rcd 8344, 8349 n. 23 (1993) (granting motion to accept late-filed rebuttal in §204(a) investigation proceeding for good cause shown where rebuttal was filed one day late due to "computer problems . . . that prevented [US West] from filing on time.") Plainly, the important issues raised by this investigation cannot be properly resolved without the information and analysis in AT&T's Direct Case. See In re Amendment of the Exemptions in Subpart J of Part 15 of the Commission's Rules Controlling the Interference Potential of Computers and Similar Electronic Equipment, GEN. Docket No. 84-801, RM 4246, 4797, 4816, 3 FCC Rcd 5143, 5144 (1988) (finding good cause to accept late-filed comments on petition for reconsideration of a Report and Order where comments enabled Commission to resolve potential point of confusion).


CONCLUSION

For the foregoing reasons, AT&T has shown good cause for the acceptance of its Direct Case filed one day late.

Respectfully submitted,

AT&T CORP.

By:

  
Shari Lee

Its Attorney

Room 3233B2  
295 North Maple Avenue  
Basking Ridge, New Jersey 07920  
(908) 221-6354

Dated: September 25, 1995

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CERTIFICATION OF SHARI LOE, ESQ.  
IN SUPPORT OF  
MOTION FOR ACCEPTANCE OF LATE-FILED  
DIRECT CASE OF AT&T CORP. (FILED ONE DAY LATE)

1. I am the attorney primarily responsible for the filing of AT&T's Direct Case in the instant proceeding. I make this certification in support of AT&T's Motion for Acceptance of Late-filed Direct Case (Filed One Day Late).

2. As the Commission is aware, it is AT&T's practice to telecommunicate pleadings drafted at its headquarters in Basking Ridge, New Jersey for filing with the Commission to its office in Washington, D.C., so that the originals can be printed in the Washington office and hand-delivered to the nearby Secretary's office for filing.

3. AT&T's Direct Case in this matter was due to be filed by 5:30 p.m. Friday, September 22, 1995. However, glitches in the software involved in merging the numerous Tables and Attachments to AT&T's Direct Case (a task being performed at another computer terminal while counsel was performing final edits) led to formatting problems that (a) were not discovered until counsel performed a final review of the document just prior to the intended telecommunication of the document at 5:00 o'clock p.m., and that (b) interfered with the telecommunication of the document itself. Compounding these problems, I was informed by personnel in the Washington office that after the document was telecommunicated, the printer in the Washington office failed to operate properly. As a result of the foregoing, the document did not actually arrive in the hands of AT&T's personnel in its Washington office until 5:28 p.m., leaving the Washington office with inadequate time to deliver the document for filing before 5:30 p.m.

4. Hagi Asfaw of our Washington office called me upon receiving the document to inform me that the its late

receipt of the document would prevent its being filed. She also told me that her quick review of the document indicated that it still contained a number of formatting problems. Despite this, I directed her to immediately serve the document on MCI by hand, intending to serve a corrected copy as soon as the problems could be corrected. She immediately called a messenger for that purpose. As indicated on Exhibit A (awaiting manifest from messenger; expected before 10:00 a.m.), the document was accepted by MCI's security guard at 6:30 p.m. A copy of the still-incorrectly formatted pages of Table II that were nonetheless served on MCI are attached as Exhibit B.

5. During the correction of the pleading on Saturday, September 23, I discovered that corrections that should have been made to footnote 30, page 11, changing an erroneous reference to Attachment C as "Table II", and correcting the description of the analytical basis for that document to accord with the description already present on Attachment C itself, had not been made. Accordingly, that small correction has been made, in addition to the correction of the formatting problem. Exhibit C is a redlined version of footnote 30, showing the correction that was made.

6. I have caused AT&T's now corrected Direct Case to be filed with the Commission and served on MCI as soon as possible after 8:30 a.m. today, Monday, September 25, the next business day after the filing due date. Thus, this pleading is in fact only minutes late, a delay that should not materially affect the time available to the interested public for comment. MCI, the only other party to this proceeding, has had the document in hand since the date it was due, only about a half an hour later than it would ordinarily have received it. (I did not receive the fax of MCI's Direct Case until shortly before 6 p.m. myself, although it was faxed to our Washington office shortly after 5 p.m. by MCI).

7. For the foregoing reasons, the late filing of AT&T's Direct Case was inadvertent and unintended, and will not prejudice the Commission's investigation of this matter, nor the ability of MCI or the general public to reply to or comment on AT&T's Direct Case.

I certify that the foregoing is true and correct. I am aware that if it is not true and correct in every detail, I am subject to punishment.

September 25, 1995

  
SHARI LOE

In re Revisions to Contract Tariff FCC No. 360,  
 Contract Tariff Transmittal No. 3076, CC docket No. 95-146  
 AT&T'S DIRECT CASE  
 Table II, page 2 of 7

Challenge Cite	Argument	AT&T Cite	AT&T Response
MCI Petition pp. 17-18	<ul style="list-style-type: none"> <li>• 36 countries where net settlement is greater than same computation based on public information [does not specify countries or provide explanation of how it calculated AT&amp;T's net settlement, or tell what "public information" MCI relies on]</li> <li>• "Blended rate" for Mexico: 80% Standard rate compared to 100% CT 360 Economy rate</li> <li>• Rates for 4 countries fail to reflect impact of recent or pending accounting rate reductions or growth-based accounting rates</li> <li>• Rates for 5 countries appear to base net settlement on overall average cost as opposed to growth-based rate AT&amp;T has negotiated</li> </ul>	<p>AT&amp;T Reply p. 5, n.8;</p> <p>AT&amp;T's March 24 Letter, p. 14, nn. 19 &amp; 20 and Attach- ment A</p> <p>Attachment VI to April 11 Letter</p> <p>Third Attachment to May 23 Letter</p>	<ul style="list-style-type: none"> <li>• As MCI did not specif address the point in its Rep its <b>March 24 Letter</b>, AT&amp; it uses for calculating net s its <b>Third Attachment</b> to it exact 1993 and 1994 \$43.6 calculation of its net settle well as that net settlement.</li> <li>• "Blending" for Mexico bands, was necessary for co other countries that are not (<b>Reply, p. 5, n.8</b>)</li> <li>• Growth-based accounti net settlement calculation, projected decreases in prop of traffic imbalances. (<b>Rep AT&amp;T's March 24 Letter</b> AT&amp;T has a growth-based demonstrated that the loss <b>2 to the Transmittal</b> to 10 countries that are below-co <b>March 24 Letter, p. 14, n.</b> show outbound traffic grow carriers --YET AT&amp;T ASS REMAIN STATIC THRO <b>Attachment VI to the Apr</b> costs have been rising faste each year since 1980 becau</li> </ul>

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Challenge Cite	Argument	AT&T Cite	AT&T Response
MCI Petition pp. 17-18 (cont'd)	<ul style="list-style-type: none"> <li>• Apparent discrepancy in that LRIC costs vary from country to country</li> </ul>	AT&T Reply p. 5, n. 8	<ul style="list-style-type: none"> <li>• LRIC costs DO vary b time costs, such as underse proportionately higher per-countries</li> <li>• CONCLUSION: Even a minute quantitative impa</li> </ul>
April 4 Stanley Analysis	<ul style="list-style-type: none"> <li>• AT&amp;T would realize "positive revenues after net settlements" of \$13.1 million on 10% MCI traffic to all 47 below-cost countries:  ⇒ ASSUMPTIONS:</li> <li>• MCI would send traffic to all 47 below-LRIC countries, not just those below settlement expense</li> <li>• "Positive revenues" do not reflect subtraction of LRIC costs attributable to provision of service</li> <li>• Net settlement costs will decrease at the same 5% annual rate assumed for accounting rate reductions for every country</li> <li>• Mexico net settlement calculated using original customer's time of day distribution for three months</li> <li>• MCI will send the same amount of traffic over CT 360 during the "free month" as every other month</li> </ul>	AT&T's April 11 Letter	<ul style="list-style-type: none"> <li>• AT&amp;T uncovers n Analysis, even using its ow determine how Stanley deri n.11); <i>AT&amp;T replicates An only for below-settlement period that is below settle loss, before considering n Attachments I-IV)</i>  ⇒ CRITIQUE OF AS</li> <li>• MCI will likely concen settlement, as this provides potential loss of proportion of CT 360 more profitable t 3)</li> <li>• Total LRIC includes 5 eat up so-called "positive r settlements are paid (pp. 6; <i>Transmittal</i>)</li> </ul>

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Challenge Cite	Argument	AT&T Cite	AT&T Response
April 4 Stanley Analysis (cont'd)	<ul style="list-style-type: none"> <li>• AT&amp;T would realize "positive revenues after net settlements" of \$13.1 million on 10% MCI traffic to all 47 below-cost countries:</li> </ul> <p>⇒ ASSUMPTIONS, cont'd:</p> <ul style="list-style-type: none"> <li>• Net settlement costs will decrease at the same 5% annual rate assumed for accounting rate reductions for every country</li> <li>• Mexico net settlement calculated using original customer's time of day distribution for three months</li> <li>• MCI will send the same amount of traffic over CT 360 during the "free month" as every other month</li> </ul>		<p>⇒ <i>CRITIQUE OF AS</i></p> <ul style="list-style-type: none"> <li>• Accounting rate decre only 5 of the 47 countries d worsening imbalance has o rate reductions for past 13 did fall on some routes, M onto those that remained b settlement costs are rising i imbalance (<b>AT&amp;T's May Attachment</b>)</li> <li>• Use of three arbitrarily customer traffic would not more rational to assume M only during far-below cost (p. 3 and n. 5, p.6, n. 13), (<b>DOING IN REALITY</b>)</li> <li>• MCI will likely send over CT 360 during free m expensive routes (p.3); AT each 10% of MCI's traffic</li> </ul>

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Challenge Cite	Argument	AT&T Cite	AT&T Response
April 21 Stanley Memo	<ul style="list-style-type: none"> <li>• States MCI's use of CT 360 will depend on its own marginal costs, not those of AT&amp;T</li> <li>• Concedes that worsening imbalance can offset accounting rate reductions</li> <li>• States AT&amp;T imbalance from 1991-1993 for Mexico and Philippines has improved, and Israel has stayed constant, contrary to AT&amp;T claim imbalance is worsening</li> <li>• Speculates AT&amp;T may improperly have included higher settlement cost operator and person-to-person in calculating its net settlement to Mexico</li> <li>• AT&amp;T is negotiating with Telmex for new rates, is asking for parity at 25 cents, could get it by 1996</li> </ul>	AT&T May 16 Letter	<ul style="list-style-type: none"> <li>• MCI's marginal costs of proportionate return and rate policies of the Commis doubt this (p. 4)</li> <li>• 1994 \$43.61 data conf net settlements are rising s countries as well</li> <li>• Contrary to speculatio or person-to-person calling settlement, as these service</li> <li>• Telmex negotiations ar be obtain its goal of 25 cen</li> <li>• CONCLUSION I: Eve would only change degree marginal costs.</li> <li>• CONCLUSION II: M that CT 360 rates are belo far below costs as AT&amp;T h</li> </ul>

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Challenge Cite	Argument	AT&T Cite	AT&T Response
MCI's May 16 Letter	<ul style="list-style-type: none"> <li>• Disputes AT&amp;T claim that net settlement rate increased from 1992 to 1993; states that cost declined 1.8% (Attachment A) <b>[does not repeat unsubstantiated claim in its Petition that AT&amp;T's rates for 36 unnamed countries were not correctly portrayed in the Transmittal]</b></li> <li>• AT&amp;T's net settlement rates are higher if inbound collect calls, for which AT&amp;T has nearly 100% market share, are included</li> <li>• There is a 6 to 12 month lag in AT&amp;T's actually feeling the impact of lowered market share</li> <li>• AT&amp;T has advantages in obtaining proportionate return, so its costs are lower than Sprint or MCI</li> <li>• AT&amp;T's net settlement cost declined 5.9% in 1993, and its settlement cost was lower than that of the industry</li> </ul>	AT&T's May 23 Letter	<ul style="list-style-type: none"> <li>• Neither MCI or Stanle exposure, or that 47 countr exactly how far below cost these costs may go down (p AT&amp;T can predict its losse substantial losses will occu</li> <li>• MCI merely parrots M declines with settlement co <b>April 11 Letter (p.5)</b></li> <li>• 1993 and 1994 data co are rising (<b>though Transm and Third Attachments -- s Attachment and Attachm</b> calculation of a decrease in incorrect, skewed by reasse former Yugoslavia each at pieces of each former count n.5)</li> <li>• Inclusion of inbound c irrelevant: (a) MCI data in 1992 and 1993, cannot inv (c) these charges are not ty rates go down; (d) <b>these ch 360 analysis because CT 3 collect service.(p.5)</b></li> </ul>

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AT&T'S DIRECT CASE  
Table II, page 7 of 7

Challenge Cite	Argument	AT&T Cite	AT&T Response
MCI's May 16 Letter, <i>cont'd</i>	<ul style="list-style-type: none"> <li>On Exhibit D, lists handful of countries that have not given MCI or Sprint proportional minute thresholds based on their market shares, and presents the lower cost of minutes above the growth threshold as though this was AT&amp;T's true cost per minute, lower than MCI's, whose market share remains below the threshold</li> </ul>	AT&T's May 23 Letter	<ul style="list-style-type: none"> <li>Exhibit D incorrectly i given MCI a proportional t over the threshold must be threshold minutes to get tr same threshold as AT&amp;T f event (p. 5, n.9)</li> <li>CONCLUSION: Thes major impact on AT&amp;T's founded</li> </ul>
MCI's May 26 Letter	<ul style="list-style-type: none"> <li>States that "net settlement rates" are declining, but context makes clear actual reference is to accounting rate declines. (p.4)</li> <li>Concedes AT&amp;T imbalance grew by 20% from 1993 to 1994, but says this is irrelevant if inbound and outbound traffic grew at same rate (p.4)</li> <li>States "net settlement is calculated by dividing the accounting rate by two and then multiplying that by the I/O ratio, which is determined by dividing inbound minutes by outbound minutes" (p.4)</li> <li>States AT&amp;T's I/O ratio has declined 3.4% in 1994, while accounting rates also declined, so that AT&amp;T's net settlement cost for the 47 countries also declined slightly (pp. 4-5, Exhibits 1 and 2)</li> <li>States AT&amp;T I/O ratio with the Philippines has increased, as has the I/O ratio with Chile, so AT&amp;T statement that costs likely to rise is "premature"</li> <li>Complains that there were errors in AT&amp;T's initial filings of 1993 traffic data, though these were corrected, so AT&amp;T's 1994 data should not be given credence -- notes data is missing for six countries for 1994</li> </ul>	AT&T's June 2 Letter	<ul style="list-style-type: none"> <li>MCI May 26 Letter fo be increases or decreases in <u>second and third years</u> of C no change in either directio</li> <li>To the extent costs do country, MCI will just shift that they haven't.</li> <li>MCI's "net settlement foreign settlement offset pe irrelevant number (p. 3-4, worthless (p. 4, n. 7)</li> </ul>

In re Revisions to Contract Tariff FCC No. 360,  
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Challenge Cite	Argument	AT&T Cite	AT&T Response
MCI's May 26 Letter, <i>cont'd</i>	<ul style="list-style-type: none"> <li>• AT&amp;T's LRIC components "predominantly represent embedded overhead related expenses that could be incurred by AT&amp;T regardless of incremental volumes."</li> <li>• Asks what were I/O traffic ratios used for each country? What was average net settlement per minute before the impact of the forecasted inbound/outbound ratios? What assumptions were used for accounting rate reductions?</li> </ul>	Transmittal Attachment 1, AT&T's March 24 Letter, Attachment A; AT&T's Direct Case	<ul style="list-style-type: none"> <li>• The concept of LRIC by the types of fixed expenses provision the expenses were realistic measure of cost the marginal cost, which does providing the service (<b>Direct Case</b>, p. 13, n. 31)</li> <li>• AT&amp;T's LRIC method Commission, has been accepted (<b>Direct Case</b>, p. 13, n. 31)</li> <li>• AT&amp;T's I/O ratios for derived from standard force data; average net settlement minute cannot be divorced inbound/outbound ratio -- settlement (<b>Direct Case</b>, p. 13, n. 31)</li> <li>• Accounting rate reductions terms of AT&amp;T's publicly filed historical trends (<b>Direct Case</b>, p. 13, n. 31)</li> </ul>

to MCI; third, whether AT&T recovers its costs for all services of the sort referenced in CT 360.

To avoid discrimination, and to retain the necessary connection with commercial reality, the relevant universe to be considered in determining whether AT&T is recovering its costs must remain CT 360, as it is likely to be used by MCI<sup>29</sup>. Any other result would require the lawfulness of a tariff to be determined not on the tariff's own merits, but in conjunction with a host of other tariffs, some of which, for instance, might not be available to other customers of the tariff at issue. Such a radical departure from existing practice could open endless possibilities for mischief and discrimination.<sup>30</sup>

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<sup>29</sup> If, with respect to Issue VI, the Commission were to determine, contrary to AT&T's showing that the revised version of CT 360 should be made generally available, AT&T's substantial cause to change the tariff would properly be evaluated in light of its additional potential exposure from the below-cost price points and free month. AT&T reemphasizes that it utilized the 10% MCI-traffic figure as an likely example of how the rates and structure of CT 360 would operate to its detriment if used by any customer with an IXC's flexibility in choosing routing. As discussed at length in AT&T's March 24 Letter, the original customer, a reseller, had begun to take selective advantage of the tariff's rate structure, projecting orders of over 100 T-1's from a group of IXCs. If MCI continues its rate of usage concentrating on Mexico, AT&T's total losses will be between \$40 and \$130 million, depending on the extent to which MCI exploits the free month. Losses on potential other customers' usage simply exacerbate those losses.

<sup>30</sup> In response to the direction contained in para. 20 of the Designation Order, slip op. at 10, AT&T has generated Table I, comparing the current rates for CT 360 with those in CT 1289 and 419, demonstrating that overall CT 419 rates for all country destinations compare favorably with CT 360 rates to all destinations, and that CT 1289 offers a few rates that are better than the current CT 360 effective rates. Although AT&T does not consider its profitability on CT 1289 relevant, AT&T has also provided a preliminary cost study on MCI's usage to date on that contract tariff in Attachment ~~CTable II~~. Because MCI is only now being provisioned on CT 419, AT&T has no MCI usage to evaluate under that offering as yet. Because MCI has been using CT 1289 for nearly nine months to carry traffic to virtually every destination in the world, and because the CT 1289 call detail must be manually compiled and then processed

Moreover, the Communications Act only requires AT&T to demonstrate that this particular tariff is within the zone of reasonableness. To utilize the substantial cause test to require a carrier to incur losses on one tariff, unjustified by any countervailing customer expectation interests regarding that tariff, simply because the carrier could make its losses up on other tariffs, would turn the statutory scheme on its head.

The third alternative, analyzing CT 360 based on whether AT&T recovers its costs of "all services of the sort referenced in contract tariff 360," has at least two fundamental flaws. First, no contract tariff is "like" any other, even if it references the same Tariff 1 or Tariff 2 services as another contract tariff. Further, analysis of whether service offerings in general are above costs would seem irrelevant and bad public policy. As above, the reasonableness of a tariff could not be determined without

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with input from at least two software systems, AT&T has not been able to complete a full cost study on CT 1289 before its direct case was due. AT&T is working to complete that study and will file it as soon as it is done. Attachment C Table II, reflecting AT&T's analysis of of the handful of CT 1289 countries that may be close to or just below cost at MCI's August usage levels compared to total revenues from the tariff, whose country routes are overwhelmingly comfortably above cost countries with usage of

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Certification of Shari Loe in Support of Motion to  
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**Exhibit C**, page 3 of 2

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| ~~1,000 minutes or more in August~~, shows that AT&T is in fact  
recovering its costs on CT 1289.

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DIRECT CASE OF AT&T CORP.

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### SUMMARY

This investigation concerns application of the substantial cause test to the reasonableness of contract tariff changes in very particular circumstances. AT&T's application itself is the result of a rare<sup>1</sup> and extreme circumstance -- inadvertent, significant underpricing of an early contract tariff that, if left uncorrected, would cause AT&T substantial losses if MCI used it for even a fraction of its international usage. MCI ordered the tariff as a generally available offering and initiated service after receiving notice that AT&T planned to revise its terms. MCI neither negotiated for CT 360, nor was asked to enter into any binding commitments in exchange for service, nor relied on CT 360 remaining unchanged during its term. Any reasonable application of the "substantial cause" test makes it clear that AT&T's tariff changes -- bringing the tariff marginally above costs -- is amply within the "zone of reasonableness."

The pendency of this investigation, unfortunately, has confirmed AT&T's earlier demonstration that it was certain to suffer serious losses if the tariff were not

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<sup>1</sup> AT&T has filed over 2,500 contract tariffs, but has been compelled to increase erroneously established rates only this once.

amended. From March 23 through August 31, AT&T has lost \$2,206,566.00 on MCI's usage under CT 360, and the rate of losses is rapidly escalating.<sup>2</sup> In contrast, MCI to date has offered nothing other than its view that AT&T should be made to suffer for its mistakes.<sup>3</sup> Substantial cause is clearly satisfied.

In response to the Designation Order, AT&T herein will demonstrate the following:

**Issue I:** Substantial cause is simply an aid for determining whether proposed tariff changes are within the zone of reasonableness. For streamlined services, alteration of the terms pursuant to which a carrier offers service should only require the carrier to show -- in the absence, as here, of any countervailing customer expectation interests -- that the proposed changes are commercially reasonable. Because there is no mechanism to retroactively recover a carrier's losses, projected (and not just actual) losses can establish "substantial cause."

AT&T agrees that where a carrier and customer have mutually traded "commitments" a carrier's burden is substantially increased, and that the injury to the

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<sup>2</sup> See Attachment A. That amount is the sum by which AT&T's cost of providing service exceeded the total revenues to date of \$1,945,711. Over \$1 million of these losses was incurred in the month of August.

<sup>3</sup> MCI Petition at p. 7.

carrier's interests must outweigh a customer's legitimate expectation interests. Here, however, MCI obtained a generally available tariff with the option of walking away if it did not like the terms. It also did not rely to its detriment in advance of the tariff changes. By contract law analogy, there was no mutuality of bargained-for commitment, and there was no "deal."

**Issue II:** The relevant costs to be considered are AT&T's costs of providing service to MCI under CT 360. Assuming AT&T is permitted to revise the tariff, Section 202 does not require that AT&T raise rates in other contract tariffs; the customers for other contract tariffs are not similarly situated with MCI, so that no discrimination issue arises. Further, this is not an appropriate proceeding to determine whether AT&T should be required to modify other tariffs; such a requirement could only be imposed, pursuant to Section 205, after an opportunity for hearing and a finding that such other tariffs were unlawful.

**Issue III:** AT&T's long-run incremental costs ("LRIC") should be utilized to determine whether the tariff rates are below cost. These are the same costs the Commission relies on in determining the reasonableness of other rate

adjustments.<sup>4</sup> There is no rationale for excluding AT&T's very real costs, internal and external, from the cost calculus; indeed, requiring AT&T to ignore generally accepted costs in demonstrating the reasonableness of a tariff change would be the sort of "additional hurdle" that Showtime proscribes.<sup>5</sup>

**Issues IV and V:** AT&T has demonstrated the reasonableness of the \$205,000 cap on the twelfth month, increasing the contract rates, elimination of volume and term discounts, and the placement of a maximum limit on a customer's total usage under the contract tariff. Having established beyond reasonable contradiction that it should be permitted to raise rates above costs, there is no basis to reject the particular (and fairly modest) proposal made by AT&T as outside a zone of reasonableness.

**Issue VI:** Even if the Commission required some variation to the tariff filed by AT&T, it would not be necessary in this instance to re-open the revised tariff to additional customers. Availability windows are an aid to assure that similarly situated customers are treated equally. Here, no other customers are so situated -- no other customers

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<sup>4</sup> E.g., In the Matter AT&T Communications Tariff FCC Nos. 1 and 2, Revenue Volume Pricing Plan and Customer Specific Term Plan, Transmittal Nos. 1808, 1971 and 1991 5 FCC Rcd 130 (1989).

<sup>5</sup> Showtime Networks, Inc. v. Federal Communications Commission, 932 F.2d 1, 3 (D.C. Cir. 1991)

ordered service during the time MCI did, and none would share the unique "expectations" of MCI at the time that would be the necessary predicate for any changes required by the Commission in this instance.

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Tariff F.C.C. No. 360                )

DIRECT CASE OF AT&T CORP.

AT&T Corp. ("AT&T") hereby submits its Direct Case in response to the Common Carrier Bureau's August 11, 1995 Designation Order in the above-captioned proceeding.<sup>6</sup> The Bureau designated six issues for investigation, set forth, in text below.

BACKGROUND

Seven months ago, over two weeks before MCI confirmed its order for CT 360, AT&T filed Transmittal CT No. 3076, explaining that "[t]his filing is necessary to avert a substantial loss to AT&T,"<sup>7</sup> and documenting the

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<sup>6</sup> In the matter of AT&T Contract Tariff No. 360, Order Designating Issues for Investigation, DA 95-1934 (Com. Car. Bur. September 8, 1995) ("Designation Order"). The Bureau's Order of June 5, 1995, suspended Transmittal No. CT 3076 for five months and initiated this investigation. In the Matter of AT&T Communications contract Tariff No. 360, Order, DA 95-1244 (Com. Car. Bur. June 5, 1995) ("Suspension Order").

<sup>7</sup> AT&T Corp. Contract Tariff Transmittal No. 3076, filed February 6, 1995 (the "Transmittal") at p. 1.

magnitude of its exposure. Based on a hypothetical use of the tariff for 10% of MCI's international traffic to certain countries, AT&T showed that loss could be as much as \$63.1 million over three years. After a full cycle of filings and informal submissions in this matter,<sup>8</sup> it remains uncontroverted that this potential exposure for AT&T was the result of (1) a claim by the original customer that the rates AT&T offered were still 6% higher than those purportedly proposed by MCI<sup>9</sup>, and (2) a series of mistakes, flawed procedures and incorrect assumptions by the AT&T people who were filing the tariff, which first became effective in September 1993.<sup>10</sup> AT&T has since settled its dispute with the first customer. MCI, which obtained service in December 1994 during a general availability period resulting from implementation of tariff revisions,<sup>11</sup> is now the sole remaining subscriber to CT 360.

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<sup>8</sup> All AT&T's and MCI's informal submissions, as well as the two Staff memos dated April 4, 1995 and April 21, 1995, have been placed on the public record in this case. AT&T has waived the proprietary designation on certain portions of its filings and the April 21 Staff memo. For consistency and ease of reference, AT&T will refer to these submissions in accordance with their parenthetical designations in notes 8 and 9 to the Designation Order.

<sup>9</sup> At the time it settled with AT&T, the original customer remained in breach of its contractual obligation to provide AT&T with a copy of this alleged MCI proposal.

<sup>10</sup> The unfortunate sequence of missteps that led to the filing of CT 360 is more fully set forth in AT&T's March 24 Letter at pages 3-5.

<sup>11</sup> Based on a business downturn clause in the contract tariff order form, AT&T agreed to revise the tariff to accommodate the customer's claimed change in business circumstances.

CT 360 offered a free month of international calling, in the form of an uncapped credit to be applied against the amount of all international calling in the twelfth month. In November 1994, AT&T's management recognized the flawed structure of this contract tariff because the original customer's usage during the "free" twelfth month jumped to \$3.5 million for that month alone, up dramatically from an eleven-month average of barely \$200,000.<sup>12</sup> When MCI's order was received in early December, AT&T discovered that the CT also offered below-cost rates to 47 countries (including a 70% below-cost Off-Peak rate to Mexico<sup>13</sup>), with no limit on the amount of calling subject to those rates and no requirement that any traffic be sent to profitable destinations.

AT&T immediately entered negotiations with the original customer in an attempt to obtain its consent to modify the tariff.<sup>14</sup> MCI was advised at the time its order

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<sup>12</sup> See AT&T's March 24 Letter, pages 5-7.

<sup>13</sup> Mexico is the second-highest international calling destination outbound from the United States, second only to Canada.

<sup>14</sup> When no agreement had been reached by the end of January, AT&T elected to file the Transmittal, which contained a different set of rate and structural changes for the original customer than for subsequent customers such as MCI, in recognition of the difference in the kind and degree of reliance by the original customer. In fact, because pricing to certain countries critical to the customer's business plans remained somewhat below cost, AT&T's analysis showed that the revised rates and structures applicable to the original customer still left AT&T at risk for a loss of \$3 million over the 18-month balance of the customer's term. Transmittal at page 3, note 8 and Attachment 3.

for the contract tariff was accepted that changes would be made to bring it above cost, was given the opportunity to retract the order, and did not confirm its order until February 21, 1995, after it had an opportunity to analyze the precise changes proposed in the Transmittal -- which include a right for MCI to terminate service if the changes are permitted to go into effect. The resulting rate structure would still be competitive with MCI's other contract tariffs with AT&T.<sup>15</sup> In all events, MCI has plenty of alternatives to CT 360 -- including its own facilities, two other attractively priced AT&T international contract tariffs, CT No.'s 1289<sup>16</sup> and 419<sup>17</sup>, as well as even lower rates available in the marketplace<sup>18</sup>. MCI thus has no binding commitment to AT&T that would survive the revisions, and will not be burdened by the CT 360 changes.

AT&T employed well-accepted long-run incremental cost ("LRIC") methodology in predicting its future exposure on CT 360, and explained exactly what elements LRIC

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<sup>15</sup> See Attachment to AT&T's June 2 Letter.

<sup>16</sup> In service since January 1995.

<sup>17</sup> Ordered; anticipated to be in service September 1995.

<sup>18</sup> Table I, a comparison of current CT 360 rates for all countries with those under CT's 419 and CT 1289 reveals that the overall rates available in those tariffs are very attractive; there are individual rates in CT 419 that are actually better than the overall range of rates offered in CT 360. Attachment B is an example of a WorldCom retail rate sheet distributed at a recent trade show. Many rates presented are lower than those in CT 360. With all these options, it is clear that it will not harm MCI if it loses CT 360.